UNITED NATIONS

AT

Administrative Tribunal

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1 August 1997

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 829

Case No. 921: MARTIN

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mikuin Leliel Balanda, Vice-President, presiding; Mr. Mayer Gabay; Mr. Julio Barboza;

Whereas, on 30 January 1996, Vincent Martin, a staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 30 May 1996, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia:

"...

3. ... to hold that but for the continued denial and unjustified selection, I would have been a legitimate candidate for promotion to the P-4 level on two occasions.

4. ... [to order] adequate compensation ... in my favour, bearing in mind the grave mental anguish and embarrassment caused to me due to this prejudicial, bias[ed] and discriminatory decision taken against me and material injury sustained by me and my family and the negative effect this will have on my future career in the United Nations.

5. ... [to] recommend that I be granted compensation in the form of an equivalent post (in grade/step and with retroactive effect) for the discriminatory, prejudicial and bias[ed] administrative decision taken against me by the authorities in order to promote a much junior candidate with no U.N. experience in the field of vacancy."

Whereas the Respondent filed his answer on 20 June 1996;

Whereas the Applicant filed written observations on 16 July 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 9 August 1982, as an Associate Administrative Officer, on a two year fixed-term appointment, at the P-2, step IV level, with the Office of General Services (OGS), Purchase, Transportation and Commercial Services Division, Transportation Section, Traffic Unit. On 1 September 1984, his appointment was converted to a probationary appointment. On 1 April 1985, he was promoted to the P-3 level, with a change in his functional title to Administrative Officer. On 1 June 1985, he was granted a permanent appointment. On 2 March 1992, he was temporarily reassigned to OGS, Transportation Section, Travel Unit, as Officer-in-Charge. On 1 July 1992, he was reassigned to OGS, Freight Forwarding Unit (FFU), with a change in functional title to Chief of Unit, FFU. On 1 November 1992, he was temporarily assigned to the United Nations Protection Force in Yugoslavia. On 27 June 1993, he was temporarily assigned to the United Nations Transition Authority in Cambodia. On 21 March 1994, he returned to OGS from his mission assignment.

On 7 February 1994, the P-4 post of Chief, Traffic Unit, Department of Administration and Management, OGS, was advertised for internal recruitment. The Applicant applied for the post.

On 30 May 1994, the Departmental Panel met to examine the records of the staff members who qualified for promotion to the P-4 level. It concluded that a staff member other than the Applicant was the most suitable candidate for the post.

On 28 June 1994, the Associate Recruitment and Placement Officer, Office of Human Resources Management (OHRM), informed the Applicant that he had not been recommended by his department for the post.

On 5 July 1994, the Applicant wrote to the Appointment and Promotion Committee, requesting that the Committee reconsider his "credentials and determine if [his] department/office's decision [was] justified."

On 14 September 1994, the Secretary, Appointment and Promotions Board and Committee, wrote to the Applicant and informed him that, notwithstanding the additional information contained in his letter of 5 July 1994, he had not been selected for the post.

On 18 November 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 9 November 1995. Its considerations, conclusions and recommendations read, in part, as follows:

> "...
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> 30. The Panel confirmed that the Joint Appeals Board cannot substitute its judgement on performance evaluation, or any other criteria for promotion, for that of the appointment and promotion bodies. However, the discretionary decision of the Secretary-General may be challenged on the ground that extraneous factors such as prejudice, discrimination, lack of due process, or a breach of procedure vitiated the contested decision.
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> 31. The Panel observed that with regard to consideration for a post, the Administrative Tribunal has consistently found that failure by the Administration to take a staff member's candidature into consideration would constitute a violation of the staff regulation; in particular staff regulation 4.4 (see Judgement No. 310, Estabial, No. 362, Williamson and No. 447, Abbas). The Panel observed from the records that the Appellant's candidature was considered by the Appointment and Promotion Committee (APC). The Panel noted that the APC had before it all the necessary documentation to enable it to assess the Appellant's qualifications and experience. The Panel noted further that the APC also had before it the Appellant's memorandum dated 5 July 1994 to the Chairperson of the APC which contained additional information.
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> 32. The Panel also requested the Chairperson of the APB [Appointment and Promotion Board], under staff rule 110.2(1), to communicate to its Chairperson, the documents relating to

the APB/APC consideration of the Appellant. In response the Panel was provided with the Recruitment File corresponding to the post in question.

33. The Panel, after reviewing the above-mentioned material, found that the Appellant had been properly considered by the appointment and promotion bodies. The Panel also found that the selection process for the post in question had been properly handled. The Panel was not able to find any irregularity in the consideration of the Appellant by the appointment and promotion bodies.

Conclusions and recommendations

34. The Panel concluded that the candidature of the Appellant for the post in question had been given full and fair consideration.

35. The Panel also concluded that the decision not to select the Appellant for the post in question had not violated his rights including the right to due process.

36. Accordingly, the Panel makes no recommendation in support of the appeal."

On 13 November 1995, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him that the Secretary-General had accepted the JAB's recommendation.

On 30 May 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The decision not to select the Applicant for the P-4 post in question, in favour of a less qualified candidate, was discriminatory and motivated by prejudice and bias against him.

Whereas the Respondent's principal contention is:

Promotion is within the discretion of the Secretary-General. The decision not to select the Applicant for promotion was not motivated by prejudice or other extraneous factors.

The Tribunal, having deliberated from 17 July to 1 August 1997, now pronounces the following judgement:

I. The Applicant contends that the decision not to select him for the post of Chief, Traffic Unit, for which he applied, was arbitrary, discriminatory and an abuse of the Respondent's authority, since the Applicant was more senior in grade and had much more relevant experience than the selected candidate. He also asserts that his qualifications and favourable performance reports were not given sufficient consideration in the selection process. The Respondent contends that the Applicant had no right to be selected for the post in question and that he was given full and fair consideration under the relevant placement and promotion procedures.

II. The Tribunal first considered the Applicant's allegation of discrimination and abuse of authority. The Tribunal recalls its jurisprudence holding that the Secretary-General has broad discretion in matters of promotion and selection for posts. (Cf. Judgements No. 134, Fürst (1969); No. 312, Roberts (1983); No. 362, Williamson (1986); No. 444, Tortel (1989)). The Tribunal has also held that it can neither substitute its own assessment of the Applicant's merits for the judgement of the Secretary-General (Cf. Judgement No. 566, Ahmed (1992)) nor examine an applicant's claims that his or her qualifications are superior to those of the selected candidates (Cf. Judgement No. 538, Al-Atraqchi (1991)). Notwithstanding the foregoing, the Secretary-General's decision may be vitiated by evidence demonstrating that it was tainted by lack of due process, a breach of procedure or the influence of extraneous factors, such as prejudice or discrimination. The burden is on the Applicant to produce such evidence (Cf. Judgement No. 581, Narula (1992)). However, the Tribunal finds that the Applicant has failed

to adduce the necessary proof to substantiate his claim of discrimination and abuse of authority.

III. The Tribunal next examined whether the Applicant's candidacy for the post had been given full and fair consideration. The Tribunal concurs with the finding of the JAB that the appointment and promotion bodies had before them all the necessary documentation to assess the Applicant's merits in respect of the vacancy; that the selection process had been correctly handled and that the Applicant had been properly considered.

IV. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Mikuin Leliel BALANDA
Vice-President, presiding

Mayer GABAY
Member

Julio BARBOZA
Member

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN
Executive Secretary